IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 921 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAGJIBHAI J DESAI

Versus

DIRECTOR OF MUNICIPALITY

Appearance:

1. Special Civil Application No. 921 of 1991

MR PK JANI, Advocate for the Petitioner

MS HARSHA DEVANI, AGP for Respondent No. 1

MR YV SHAH for Respondent No. 2-3

MR SAMIR J BUNDELA, Advocate for

MR HARIN P RAVAL for Respondent No. 4

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 02/07/2003

ORAL JUDGEMENT

#. The petitioner has challenged the decision of the respondent no.1-Director of Municipalities, relaxing the eligibility criteria pursuant to the proposal dated 5.11.90, by which the President of the Municipality had requested the Director to consider the case of one Laxmanbhai Mochi, for relaxation of the eligibility criteria of educational qualification for his appointment to the post of Tax Superintendent. The petition was filed on 10th February, 1991 and status-quo, which was granted, has remained operative, as a result of which, admittedly, no further action was taken pursuant to the impugned order dated 8th February, 1991, which is now placed on record by the respondents alongwith other papers.

#. According to the petitioner, he was working as Octroi Clerk in the respondent-Municipality. He had put in 22 years of service, and belonged to Economically and Socially Backward Class community. He was having M.Com. Degree and had passed Local Self-Government Diploma Examination. He had also passed his 1st LL.B. examination. According to him, his service record was good.

2.1 The respondent-Municipality, by a resolution dated 25th March, 1977, at Annexure "A" to the petition, resolved to create a post of Tax Superintendent in the Municipality. As per the eligibility criteria for appointment to that post, the candidate was required to be a graduate and preference was to be given to a Law graduate. The post of Tax Superintendent was to be in the pay-scale of Rs. 200-10-215-EB-12-310-EB-15-430. The said proposal of the Municipality was approved by the respondent no.1-Director of Municipality, by his order dated 2nd October, 1977, a copy of which is at Annexure:B to the petition. Accordingly, the post of Tax Superintendent came to be sanctioned on 2nd October, 1977, which was required to be filled up as per the conditions mentioned in the said order. It appears from that order that, the appointment was to be made by direct recruitment as per the prevalent rules and regulations mentioned in the order.

2.2 Admittedly, after the post was sanctioned, the Municipality issued an advertisement on 31.1.1982, inviting applications for the post of Tax Superintendent. In the said advertisement, a copy of which is at Annexure:C to the petition, the eligibility criteria of graduate with preference to Law graduate was specifically mentioned. In the advertisement, it was also stated that the employees of the Municipality, who were possessing

requisite qualifications, may also apply for the post. The petitioner made an application pursuant to this advertisement, as he was possessing the required educational qualifications and was serving in the Municipality as a Clerk. It, however, appears that the President of the Municipality, instead of proceeding ahead with the process of selection for appointment to the said post pursuant to the advertisement, made an order dated nil July, 1981, a copy of which is at Annexure:D to the petition, by which, after referring to the advertisement and to the fact that some applications were received from the members of the staff and outside candidates, and taking note of the fact that the petitioner who possessed the requisite qualifications had also applied, proceeded to observe in para-4 of his order that, one Laxmanbhai was working in the post of Tax Inspector, which was the immediate lower post to the post of Tax Superintendent, and that since he was working from 16.7.71 in that post, he was entitled to be appointed as Tax Superintendent as per seniority. It was, however, noted that he did not possess the requisite educational qualification, but was only Matriculate pass and had a Self-Government Diploma. However, in view of his long experience, the President decided that the post of Tax Superintendent should be filled in by appointing the said Laxmanbhai by relaxing the educational qualifications. This order of the President was placed before the Staff Selection Committee, and as per the copy of the minutes at Annexure:E to the petition, the Staff Selection Committee, on 18-12-1981, approved the said order appointing Laxmanbhai in relaxation of the educational qualifications.

2.3 It appears that thereafter on 2nd/9th March, 1982, the District Collector, by an order made under Section 258 of the Gujarat Municipalities Act, a copy of which is at Annexure:H to the petition, held that, no such relaxation of educational qualifications could be made for appointing Laxmanbhai. It was held that the post was to be filled in from amongst the graduates by inviting candidates from the Employment Exchange and other offices, as mentioned in the order, dated 2.10.77, by which the post was sanctioned. It was held that the educational qualifications could not be relaxed by the Municipality without obtaining prior approval of the Director. The petitioner had also addressed a letter to the Director on 22nd March, 1982, drawing his attention to the illegality, which was being committed in relaxing the educational qualifications and appointing Laxmanbhai to the post contrary to the rules. The Director thereupon made an order, a copy of which is at Annexure:J

to the petition, in terms, holding that the post was required to be filled in by direct recruitment by calling applications and further requiring the Municipality not to pass the resolution which was on the agenda of the meeting which was to be held on 24th March, 1982 for filling in the post as per the resolution of the Staff Selection Committee. The Municipality was required to consider making of appointment from amongst the candidates who may be available pursuant to the advertisement, with a warning not to ignore this order of the Director. Even in the communication dated 2nd November, 1982, a copy of which is a Annexure:K to the petition, the Collector, in terms, wrote to the Municipality that the post was to be filled in from amongst the candidates who were eligible and and applied for the post. Again, the Director wrote to the Municipality on 3.1.84, a copy of which is at Annexure:L to the petition, rejecting the proposal of the Municipality made on 19.10.83 for relaxing the educational qualification of Laxmanbhai for appointment to the said post, and stating in no uncertain terms that the rights of other employees of being considered should not be adversely affected in this manner. It was stated that if the post was to be filled in by promotion, only those who were possessing educational qualification should be considered for appointment as per seniority. The Municipality was advised to proceed accordingly by the Director. Again on 7.4.84, the Director wrote to the Municipality that, since its proposal dated 19.10.83 was rejected, it should proceed further to fill in the post from amongst the qualified candidates who were available.

#. From the above facts, it is clear that the attempt of the President of the Municipality to get Laxmanbhai appointed as Tax Superintendent had miserably failed, because, Laxmanbhai was not at all qualified as per the criteria of educational qualification adopted for the post. However, it appears that the President did not pay any heed to the stand taken up by the Collector and the Director, and instead of proceeding to fill up the post, as per the recruitment criteria, wrote a letter dated 5.11.90, a copy of which is placed on record, to the Director referring to Special Civil Application No. 2876 of 1984, which was filed by Laxmanbhai, in which, after narrating the fact that the earlier request of the Municipality to relax the educational qualification of Laxmanbhai was turned down, he again, in detail, pleaded the case of Laxmanbhai, praying in para-8 of the letter that the educational qualification may be relaxed in the case of Laxmanbhai. It was also stated that Laxmanbhai had agreed to withdraw the petition filed by him and a

letter in that regard was forwarded along with his communication. Admittedly, the Municipality had not passed any resolution for amending the initial requirement of graduate with preference to Law graduate, which was the only educational requirement laid down under the order sanctioning the post. However, the respondent no. 1, acting on the said letter addressed by the President pleading the case of Laxmanbhai, without there being any resolution of the Municipality, and ignoring the earlier stand taken up by the Director and the Collector, proceeded to make the impugned order dated 8.2.91, in which he referred to the letter, dated 5.11.90 as a proposal of the Municipality and pursuant to that letter, prescribed the revised educational qualifications namely of graduate with priority to Law graduate with an alternative of S.S.C. and L.S.G.D. with seven years' experience. From the chronology of events, it is abundantly clear that the President of the Municipality was bent upon to anyhow get Laxmanbhai, who was not at all qualified, appointed to the post of Tax Superintendent, and to ignore the claim of the petitioner, who possessed the qualification higher than the requisite qualification, and ought to have been considered for the post which was advertised pursuant to which he had applied. It is unfortunate that the Director of Municipality did not see through the game, and though there was no resolution made by the Municipality, he acted on a simple letter of the President, not realising that it was the Municipality which alone was empowered under Section 271(d) & (g) to make rules, not inconsistent with the Act and the Rules or orders of the State Government, for determining the staff, officers and servants to be employed by the Municipality and their powers and duties, and for determining, subject to the limitations imposed by Sections 47 and 50, inter alia, mode and conditions of appointing any officer and servant.

#. The learned counsel for the Municipality stated that though there was no resolution made by the Municipality for amending the criteria of educational qualifications laid down for the post in question, the letter of the President sent on 5.11.90 should be considered as reconsideration of the earlier decision. However, admittedly, since no resolution was made by the Municipality, there was no question of the President writing to the Director for reconsideration of the resolution of the Municipality, which was earlier disapproved by the Collector and the Director, who, in his order, dated 2nd July, 1977, clearly prescribed the educational qualifications. The President was actuated

with a desire to secure an appointment to Laxmanbhai, as is clear from the tenor of the letter, dated 5.11.90, addressed by him to the Director. The learned counsel for the Municipality submitted that in any event, Section 45 of the Gujarat Municipalities Act, 1963 enabled the President to take such action in emergent situations. Section 45 of the Act spells out functions of the President of a Municipality and, inter alia, lays down in clause (d) that, the President of a Municipality may in cases of emergency direct in writing execution or stoppage of any work or the doing of any act which requires sanction of the Municipality. However, he cannot act in contravention of any order of the Municipality prohibiting execution of any particular work or doing of any particular act, and is required to report forthwith the action taken under this Section. The letter written on 5.11.90 by the President can, by no stretch of imagination be described as discharge of duty by a President under Section 45 of the Act. Therefore, the impugned order, dated 18.2.91 has been made by the respondent No.1, without there being any valid proposal by the Municipality for amending the rules. Since the impugned order makes a specific reference to the letter of the President sent on 5.11.90, which all throughout, pleaded for the relaxation of the educational qualifications in the case of Laxmanbhai, the impugned order has effect of meting out a special treatment to Laxmanbhai, and is clearly an arbitrary and illegal order, which smacks of legal malafides, because, it was tailored to suit the desire of the President of the Municipality to get Laxmanbhai appointed to the post, though not qualified, despite the fact that qualified candidates, including the petitioner who had applied pursuant to advertisement, were available for consideration for appointment to the post. When qualified persons were available, there was no valid reason to relax the qualifications and the only inference that can be drawn from the impugned order is that, it was made with a view to show an undue favour to Laxmanbhai, who was otherwise not eligible for being considered for the post. The impugned order, dated 8.2.91 is, therefore, violative of Articles 14 and 16 of the Constitution and null and void. Since the impugned order was stayed, no equities have arisen, and, as is stated, Laxmanbhai has already retired from service on 30.4.96.

#. The impugned order, dated 8.2.91, made by the respondent no.. 1 is, therefore, hereby set aside with a direction that the Municipality will now proceed with the matter of filling in the post of Tax Superintendent, as per the existing rules and regulations, keeping in mind

the eligibility criteria laid down for that post in the order of the respondent no. 1, dated 2.10.77. If the petitioner applies for the post in question, which will be re-advertised, in view of long passage of time due to pendency of this petition, his application will be considered as per the eligibility criteria, in accordance with law. Rule is made absolute accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

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